

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 22

MARJAM SUPPLY COMPANY, INC.¹
Employer

and

Case 22-RC-12641

**TEAMSTERS LOCAL 863, INTERNATIONAL
BROTHERHOOD OF TEAMSTERS²**
Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board. Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned. Upon the entire record in this proceeding,³ the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act. It will effectuate the purposes of the Act to assert jurisdiction herein.⁴

¹ The Employer's name appears as amended at the hearing.

² The Petitioner's name appears as amended at the hearing.

³ Briefs filed by the parties have been fully considered.

⁴ The Employer, a New York corporation, is engaged in the pick up and delivery of building materials at its Hillside, New Jersey facility, the only facility involved in this matter.

3. The Petitioner, the labor organization involved, claims to represent certain employees of the Employer.⁵

4. A question concerning commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act for the reasons described *infra*:

All full-time drivers employed by the Employer at its Hillside, New Jersey facility, excluding all mechanics, office clerical employees, guards and supervisors as defined in the Act and all other employees.

I. INTRODUCTION

Petitioner seeks to represent a unit of drivers employed by the Employer at its Hillside, New Jersey facility, excluding all other employees. There is no history of collective bargaining. The Employer, contrary to the Petitioner, contends that its mechanics should be included in the unit. For the reasons described below, I find that the inclusion of mechanics is not required.

II. FACTS

A. Operations

The facts are not in dispute. The Employer is a building materials supplier with numerous facilities in the northeast United States, including Connecticut, Delaware, Massachusetts, New Hampshire, New Jersey, New York and Pennsylvania. Its corporate office is in Brooklyn, New York. Its national fleet consists of approximately 350 vehicles

⁵ The parties stipulated that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

including cranes, hydraulic booms, flat bed, straight bed, box and hydraulic boom trucks, tractor trailers and forklifts (vehicular and truck-mounted).

At the Hillside facility, the Employer employs nine drivers and four mechanics. The Employer also utilizes part-time clerical staff.

The Employer opened the Hillside, New Jersey facility in July 2002. The facility consists of a building used for preventative maintenance of its vehicles, a larger building used for repair work and an office. Initially, the Hillside facility was strictly a fleet maintenance and repair facility, employing mechanics. In 2003, the Employer hired the first driver to work at the Hillside facility. About one year later, it hired another driver. The responsibility of these two drivers was to transport the Employer's vehicles and equipment to and from the Hillside facility for repair and maintenance by the mechanics.

In approximately April 2005, the Employer began delivering building supply equipment to its customers from its Hillside facility, instead of using a third-party freight carrier for this function. It hired seven additional drivers. Since April 2005, the primary function of all of the drivers has been to supply building supply equipment to customers.

B. Supervision

The Hillside facility is supervised by Ron Raboy, Corporate Fleet Manager, and Russ King, Traffic Manager.⁶ Raboy is primarily responsible for the movement, repair and purchase of the Employer's equipment. King is responsible for dispatching drivers and coordinating the movement of equipment between the Employer and its customers and between the Employer's locations, as well as pick-ups from vendors. King also schedules equipment for repair and service by the mechanics and tracks the status of

⁶ The parties stipulated that King is a supervisor within the meaning of Section 2(11) of the Act.

repair work. In most cases, Raboy exercises authority to hire and fire both drivers and mechanics. King possesses disciplinary authority, subject to approval by Raboy, and evaluates drivers and mechanics.

C. Qualifications

The Employer requires drivers to possess a Class A Commercial Driver's License (CDL) and at least six months experience as a commercial driver. It takes a driver approximately two to three months to obtain a CDL, including training and testing. Drivers must also pass a Department of Transportation (DOT) physical.

Mechanics must possess a minimum of two years experience in the repair and maintenance of vehicles weighing 17,000 to 80,000 pounds. The Employer expects that during their previous experience mechanics will have become certified to work on air brakes, although there was no evidence that the Employer requires such certification. The Employer does not require its mechanics to have CDLs. Mechanics are not regulated by the DOT. The Employer requires mechanics to pass its own physical.

D. Duties

Drivers pick up and deliver building supply equipment to and from the Employer's customers. Drivers do not maintain or repair vehicles. They drive nine tractors and may use any of fourteen various trailers. Two of the drivers also work at times as over-the-road overnight drivers, when the Employer requires them to sleep in the sleeper-berths of their delivery trucks when making deliveries.

The mechanics specialize in various kinds of maintenance and repair work. For example, certain mechanics work primarily on fork lifts, others work primarily on

hydraulic booms and others perform preventative maintenance. Mechanics drive service vehicles, but do not drive delivery vehicles or deliver building supply equipment.

E. Wages

Drivers and mechanics are paid an hourly rate and receive their paychecks bi-weekly. Both drivers and mechanics are paid overtime pay for hours worked over forty hours in a week.

The hourly rate for the drivers ranges from \$16.50 to \$18 per hour. One driver earns the \$16.50 minimum and one earns the \$18 maximum. The others earn \$17.50 per hour. The hourly rate for the mechanics ranges from \$18 to \$25 per hour. Two mechanics receive \$18 and \$19 per hour respectively. The other two mechanics receive the maximum hourly rate of \$25.

F. Working Conditions

Drivers who are not working over-the-road begin and end their work day at the Hillside facility. Drivers spend the remainder of the day away from the facility and do not return for lunch. The start times for drivers are staggered from 5 AM or, on occasion, as early as 3 AM or 4 AM, to 8 AM. Typically, a driver arrives at the facility, punches in, picks up required paperwork, hooks up a tractor to a trailer, inspects the vehicle pursuant to DOT regulations, and leaves the facility to pick up and deliver equipment to the Employer's customers. The drivers call in when they have reached their first stop.

Mechanics also begin and end their work day at the Hillside facility. They spend approximately 90 percent of their time at the facility performing maintenance and repairs. During the remaining 10 percent, mechanics repair vehicles away from the facility or pick

up parts. The start times for mechanics are also staggered. Two mechanics start at 6 AM and two start at 8 AM.

Drivers and mechanics work ten to twelve hours daily. Both record their hours on a palm recognition time clock. Drivers, but not mechanics, are subject to regulation by the DOT concerning hours and recordkeeping.

Mechanics are required to wear Employer-supplied uniforms; drivers are not, but the Employer requires drivers to comply with a dress code. Drivers and mechanics must use safety equipment when at a construction site. The Employer supplies drivers and mechanics with hard hats, safety vests and gloves.

The Employer provides both a Drivers Handbook and a Mechanics Handbook, as there are some issues of specific concern to each classification. For example, the Drivers Handbook covers accident reporting and vehicle inspections. The Handbooks have common policies, such as those pertaining to attendance and discipline.

Drivers and mechanics park their personal vehicles on-site in the same parking lot when they arrive at the facility. Drivers and mechanics use the same break room, dressing room and bathroom.

G. Benefits

Drivers and mechanics are eligible for the same contributory health insurance, disability insurance, life insurance and retirement programs. They have the same entitlement to vacation, holiday and personal days. As noted above, the Employer supplies uniforms to the mechanics, but not to the drivers.

H. Interaction and Interchange

Approximately four times each week, a driver goes on the road with a mechanic to troubleshoot or test drive a vehicle. With a similar frequency, a driver and a mechanic work together to remove equipment that arrives in bulk at the Hillside facility. Approximately once a week, a driver and mechanic travel together to retrieve a piece of broken equipment. Mechanics spend approximately ten percent of their time on road calls or picking up parts. On most road calls, mechanics travel to the broken equipment on their own or with another mechanic, in a service vehicle.

An outside vendor performs work on hydraulic booms and cranes. A mechanic accompanies a driver in delivering this equipment to the vendor, to discuss the repair.

Approximately four times each week, drivers pick up parts needed by mechanics. Approximately several times each month, drivers pick up vehicles at another facility for repair; no evidence was presented that this function requires interaction between the drivers and the mechanics.

No drivers have become mechanics and no mechanics have become drivers.

The Employer holds meetings attended by both drivers and mechanics on approximately a quarterly basis. With the same frequency, the Employer holds meetings attended only by drivers concerning issues pertaining to the drivers. The Employer also holds meetings with only mechanics as deemed necessary, concerning matters such as new products and maintenance requirements.

III. ANALYSIS

Section 9(a) of the Act implements the general provisions contained in Section 7 of the Act, which grant employees the right to self-organization and to representation through agents of their own choosing. Section 9(a) goes further by providing that representatives selected for the purposes of collective bargaining shall be the “exclusive” representatives. There are specific requirements in the statutory provision. The representative must be chosen by a majority of the employees. These employees must be in a unit appropriate for collective-bargaining purposes.

In *Boeing Co.*, 337 NLRB No. 24 (2001), the Board described its policy with respect to determining appropriate units:

The Board’s procedure for determining an appropriate unit under Section 9(b) is to examine first the petitioned-for unit. If that unit is appropriate, then the inquiry into the appropriate unit ends. If the petitioned-for unit is not appropriate, the Board may examine the alternative units suggested by the parties, but it also has the discretion to select an appropriate unit that is different from the alternative proposals of the parties. See, e.g., *Overnite Transportation Co.*, 331 NLRB No. 85, slip op. at 2 (2000); *NLRB v. Lake County Assn. for the Retarded*, 128 F.3d 1181, 1185 fn. 2 (7th Cir. 1997).

There is nothing in the statute which requires that the unit for bargaining be the only appropriate unit, the ultimate unit or the most appropriate unit; the Act requires only that the unit be “appropriate,” that is, appropriate to insure to employees in each case “the fullest freedom in exercising the rights guaranteed by this Act.” *Bartlett Collins Co.*, 334 NLRB 484 (2001); *Overnite Transportation Co.*, 322 NLRB 723 (1996).

The propriety of the petitioned-for unit of drivers herein is determined by whether they share a community of interest. In determining the existence of community of interest, the Board weighs the following factors:

[T]he existence of substantial differences in interests and working conditions includ[ing]: a difference in method of wages or compensation; different hours of work; different employment benefits; separate supervision; the degree of dissimilar qualifications, training, and skills; differences in job functions and amount of working time spent away from the employment or plant situs under State and Federal regulations; the infrequency or lack of contact with other employees; lack of integration with the work functions of other employees or interchange with them; and the history of bargaining.

Kalamazoo Paper Box Corp., 136 NLRB 134, 137 (1962).

Applying the foregoing analysis, I note that the drivers and mechanics have a substantial difference in compensation rates: the hourly rates for drivers ranges from \$16.50 to \$18 per hour; the rates for mechanics ranges from \$18 to \$25 per hour.

The drivers' and mechanics' start times are different: drivers begin work from 3AM to 8 AM; mechanics start from 6 AM to 8 AM. Both work the same 10 to 12 hour days. There are also over-the-road drivers whose hours differ from any of the mechanics.

Drivers and mechanics have a common supervisor. The more significant benefits available to the two classifications, such as health insurance and leave, are substantially the same: the main difference is that mechanics, but not drivers, receive an Employer-supplied uniform.

The drivers' and mechanics' job functions, qualifications, training and skills are dissimilar. The Employer requires considerably more experience - two years - for its mechanics, than that required for drivers - six months. Drivers spend a majority of their time away from the facility, while the reverse is true for the mechanics. While there is functional integration between the duties of drivers and mechanics, they do not have sustained or significant contacts with each other in the course of performing their work, as the drivers spend a majority of their time away from the facility; the mechanics spend a majority of their

time there. Drivers are subject to DOT regulations, while mechanics are not. There has been no interchange. There is no history of collective bargaining.

In *Mc-Mor-Han Trucking Co., Inc.*, 166 NLRB 700 (1967), the Board held that a separate unit of drivers was appropriate and rejected the Employer's contention that mechanics should be included. In *Mc-Mor-Han*, the Board emphasized in its conclusion that the functions of the drivers and mechanics were distinct, the drivers spent a majority of their time away from the terminal and had only limited work contacts with the mechanics, there was no interchange, and there were substantial differences in wages and hours. Although the *Mc-Mor-Han* employees received the same benefits and were commonly supervised, the Board considered these factors "not so significant as to require the inclusion of all employees in a single unit." *Id.* at 701. Accordingly, the facts of the instant case do not reveal such a community of interest or degree of integration between the truck drivers and the mechanics to render the requested truck driver unit inappropriate. See also *Flav-O-Rich, Inc.*, 234 NLRB 1011 (1978); *Walker-Roemer Dairies, Inc.*, 186 NLRB 430 (1970); *Diamond Standard Fuel Corp.*, 179 NLRB 702 (1969).

The facts in *Carpenter Trucking*, 266 NLRB 907 (1983), relied-upon by the Employer, depict significant interaction between the drivers and mechanics and a degree of functional interdependence not present here. In *Carpenter Trucking*, unlike here, drivers assisted mechanics in making repairs. *Airco, Inc.*, 273 NLRB 348 (1984), also cited by the Employer, turned on considerations involving a presumptively appropriate plant-wide unit and the goal of avoiding a residual unit, issues not present here.

Based on the above and the record as a whole, I find that a unit limited to drivers, as requested by the Petitioner, is appropriate in this matter.

IV. DIRECTION OF ELECTION

An election by secret ballot shall be conducted among the employees in the unit found appropriate at the time and place set forth in the notices of election to be issued subsequently subject to the Board's Rules and Regulations. Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation or temporarily laid off. Employees engaged in an economic strike who have retained their status as strikers and have not been permanently replaced are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike that have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced. Those eligible to vote shall vote whether or not they desire to be represented for collective bargaining purposes by **Local 863, International Brotherhood of Teamsters.**

V. LIST OF VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties in the election should

have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, two (2) copies of an election eligibility list containing the full names and addresses of all the eligible voters in the voting groups found appropriate above shall be filed by the Employer with the Regional Director in Region 22, who shall make the list available to all parties to the election. *North Macon Health Care Facility*, 315 NLRB 359 (1994). In order to be timely filed, such list must be received in NLRB Region 22, 20 Washington Place, Newark, New Jersey on or before **September 26, 2005**. No extension of time to file this list shall be granted, except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

VI. RIGHT TO REQUEST REVIEW

Under the provision of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by **October 3, 2005**.

Signed at Newark, New Jersey this 19th day of September 2005.

/s/ Gary T. Kendellen

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